(16,604.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 391.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES PAUL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1897.

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Arkansas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the November term, 1896, thereof, between St. Louis, Iron Mountain & Southern Railway Company, pl't'f in error, and Charles Paul, defendant in error, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such statute, a manifest error hath happened, to the great damage of the said St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court, before the second Monday of October, 1897, to the end that, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22 day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Issued in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the 121st.

{ The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A. }

RALPH L. GOODRICH,
Clerk U. S. Circuit Court, East. Dist. Ark., West. Div.

[Endorsed:] Filed May 22d, 1897. P. D. English, clerk supreme court of Arkansas.

2 Allowed by—

HENRY G. BUNN,
Chief Justice of the Supreme Court of Arkansas.

STATE OF ARKANSAS:

In the Supreme Court.

I, P. D. English, clerk of the supreme court of the State of Arkansas, hereby certify that in obedience to the mandate of the within writ of error a duly certified transcript, under the said seal of said court, of the record and proceedings in the cause therein stated, with all things concerning the same, is hereto attached.

In testimony whereof I hereto set my hand as clerk of said supreme court and affix the seal of said court, at my office, in the city of Little Rock, this 22d day of May, A. D. 1897.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,
Clerk Supreme Court of Arkansas.

Service accepted this 22nd day of May, 1897.

CHARLES PAUL,
Def't in Error,
By J. A. WATKINS &
D. M. CLOUD,
Att'ys of Record.

3 *Citation.*

The United States of America to Charles Paul, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein The St. Louis, Iron Mountain & Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable H. G. Bunn, chief justice of the supreme court of Arkansas, this 22 day of May, A. D. 1897.

HENRY G. BUNN,
Chief Justice of the Supreme Court of Arkansas.

Service of the within citation acknowledged this 22 day of May, 1897, at Little Rock, Arkansas.

CHARLES PAUL,
Def't in Error,
By J. A. WATKINS &
D. M. CLOUD,
Attorneys for Charles Paul, Defendant in Error.

Filed May 22d, 1897.

P. D. ENGLISH, *Clerk.*

4 No. 2921. St. L., I. M. & S. R'y Co. *vs.* Chas. Paul. Substituted record. Filed by order of court Feb'y 17th, 1896. W. P. Campbell, clerk, by P. D. English, D. C.

5 In Justice Court of G. R. Hunnicutt, in Saline Township, in Saline County, Arkansas.

CHARLES PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Complaint at Law.

The plaintiff states that the defendant, The St. Louis, Iron Mountain and Southern Railway Co., is a regularly organized corporation under the laws of the State of Arkansas and own- and operate- a railroad from Moark, Arkansas, to Texarkana, Arkansas. The plaintiff states further that on the 28th day of March, 1894, he hired to defendant company as a laborer; that he contracted to work for the defendant at the price of $1.25 per day, and that he performed 30½ days' labor, and on the 4th day of May, 1894, the defendant discharged plaintiff, and at said time defendant owed plaintiff the sum of $21.80 after deducting board and hospital fees; defendant failed to pay plaintiff said sum on said day and has refused to pay the same until this time; that there has been 39 working days' service — he was discharged; that by law he is entitled to the sum of one & $\frac{25}{100}$ dollars per day as a penalty for said failure to pay on said day of discharge. Whereupon he prays judgment for said sum of $21.80 and the further sum of one & $\frac{25}{100}$ — per day until paid and for costs.

D. M. CLOUD,
Att'y for Pl'ff.

I, Charles Paul, do solemnly swear that I am the plaintiff in this action, and that the matters and facts set forth herein are true.

CHARLES PAUL.

6 Subscribed and sworn to before me this June 18, 1894.
G. R. HUNNICUTT, *J. P.*

Summons issued June 18, 1894.
Returned and filed June 29, 1894.

Saline Circuit Court.

CHAS. PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Demurrer.

Comes the defendant and demurs to so much of plaintiff's complaint herein as seeks to recover a penalty for failure to pay wages claimed by plaintiff at the time of his discharge, on the following grounds, to wit:

That the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employees of railroads," approved March 25th, 1889, Acts of 1889, page 76, on which the penalty is sought to be collected, is unconstitutional and void, in this:

1st. That it is violative of article 5 of the amendments to the Constitution of the United States.

2nd. That it is violative of article 14 of the amendments to said Constitution.

3rd. That it is violative of sections 2, 3, 7, 8, 13, 18, 21, and 22 of article 2 of the constitution of the State of Arkansas.

4th. That it is special and class legislation and therein violative of both the Constitution of the United States and the *Constitution of the United States and* constitution of the State of Arkansas.

J. E. WILLIAMS,
DODGE & JOHNSON,
Attorneys for Defendant.

7 Saline Circuit Court.

CHARLES PAUL, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant. } Answer.

I.

Comes the defendant and for answer to plaintiff's complaint herein admits that it is indebted to plaintiff in the sum of $22.50 and interest thereon from the date of the discharge of said plaintiff, and no more, and now offers to confess judgment to said plaintiff for said amount in court.

II.

And defendant, answering so much of said complaint as seeks to recover a penalty for failure to pay the amount of wages due said plaintiff at the date of his discharge, says that the said plaintiff specially directed that his time-check should be sent to the agent at Benton for payment, which was accordingly done, and that the said plaintiff remained out of reach of the defendant herein, off at work on the interior of the Lott road, and that he has not given the defendant an opportunity to pay him his said wages until the day prior to the bringing of this suit, and then the said defendant did not refuse to pay him his said wages then due him, but merely required identification that he was the party named and to whom this defendant was indebted; that the same was a reasonable requirement and became necessary by reason of the plaintiff's having directed that the money should be sent to a station agent on a part of defendant's line different and not to the point where the said plaintiff had been at work, and where the defendant had no other means of knowing the party to be one of its employés.

8 III.

And, further answering, this defendant says that plaintiff is not entitled to recover as a penalty any amount above the wages actually due him at the time of his discharge, with interest thereon, for the reason, and defendant so alleges, that the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employees of railroads," approved March 25, 1889 (Acts of 1889, p. 76), under which the penalty is claimed, is unconstitutional and void and of no effect, in this:

First. That it is violative of article 5 of the amendments to the Constitution of the United States.

Second. That it is violative of article 14 of the amendments to said Constitution.

Third. That it is violative of sections 2, 3, 7, 8, 13, 18, 21, and 22 of article 2 of the constitution of the State of Arkansas.

Fourth. That it is special and class legislation, and therefore in violation of both the Constitution of the United States and the State of Arkansas.

Wherefore defendant prays to be permitted to confess judgment for the amount it actually owes plaintiff, and to go hence with its costs.

J. E. WILLIAMS &
DODGE & JOHNSON,
Attorneys for Defendant.

9 In the Saline Circuit Court, August Term, 1894.

CHARLES PAUL
vs.
ST. L., I. M. & S. R'Y CO.

Comes the plaintiff and demurs to the 3rd paragraph of defendant's answer, because he says that the matters and facts stated there- do*es* not constitute any defense to the plaintiff's cause of action.

D. M. CLOUD,
Att'y for Plaintiff.

10 STATE OF ARKANSAS }
County of Saline. }

MONDAY, *August 27th*, 1894.

At a circuit court begun and held at the court-house, in the town of Benton, county of Saline and State of Arkansas, on Monday, August 27th, 1894, the same being the 4th Monday in said month and the time and place appointed by law for holding a term of said court—present and presiding, the Hon. A. M. Duffie, judge of the 7th judicial circuit of Arkansas, before whom the following proceedings were had, to wit:

Ordered that court be proclaimed open pursuant to adjournment, which was accordingly done by the sheriff of Saline county.

Friday, August 31st, 1894, an adjourned day of said term of said court.

CHARLES PAUL
vs.
ST. L., I. M. & S. R'Y CO. } 539.

On this day comes the plaintiff, by his attorney, D. M. Cloud, Esqr.; comes also the defendant, by its attorney-, Dodge and Johnson and J. E. Williams, Esqrs., and files its demurrer to plaintiff's complaint herein.

Saturday, September 8th, 1894, an adjourned day of said term of said court.

CHARLES PAUL
vs.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

11 On this day comes the plaintiff in person and by his attorney, D. M. Cloud, Esqr.; comes also the defendant, The St. Louis, Iron Mountain and Southern Railway Company, by its attorneys, Dodge and Johnson, Esqrs., and the demurrer heretofore filed herein is argued by counsel and is submitted to the court, and is by the court overruled; to which ruling of the court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Same day.

CHARLES PAUL
v.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

On this day comes the parties to this suit, by their respective attorneys, and defendant files its answer to complaint of plaintiff herein.

Same day.

CHARLES PAUL
v.
THE ST. L., I. M. & S. R'Y COMPANY. } 539.

On this day comes the parties to this suit and by their respective attorneys, and the plaintiff files his demurrer to the 3rd paragraph of defendant's answer herein. Said demurrer was submitted to the court and by the court sustained.

It is therefore considered and ordered by the court that said demurrer, as to the 3rd paragraph of defendant's answer, be, and the same is hereby, sustained; to which ruling the defendant at the time excepted.

Saturday, September 8th, 1894, an adjourned day of said term of said court.

12 CHARLES PAUL
v.
THE SAINT LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY. } 539.

On this day, this cause coming on for trial and both parties announcing themselves ready, by agreement of the parties a jury trial is waived, and the same is heard by the court, sitting as a jury; and after hearing the evidence, the cause having been submitted, the court doth find that the plaintiff is entitled to recover from the defendant the sum of $21.80, his debt, and the further sum of $48.75 as a penalty for failure to pay him at the time of his discharge, being at the rate of $1.25 per day from the date of his discharge until the 18th day of June, the date of the commencement of this suit.

It is therefore considered, ordered, and adjudged that the plaintiff, Charles Paul, do have and recover of and from the defendant, The St. Louis, Iron Mountain and Southern Railway Company, the sum of $70.55 and all his costs in this suit expended, for which execution may issue. On this comes the defendant and prays an appeal to the supreme court of the State of Arkansas, which is granted.

13 *Bill of Costs.*

CHARLES PAUL
v.
ST. L., I. M. & S. R'Y CO. } 539.

To W. H. Evans, clerk	$2 50
" G. R. Hunnicutt, J. P.	4 05
" J. R. McAdoo, const.	1 20
Total	$7 75

Clerk's Certificate.

STATE OF ARKANSAS, }
County of Saline. }

I, W. H. Evans, clerk of the circuit court within and for the county aforesaid, do hereby certify that the within and foregoing is a true and complete copy of the "complaint, demurrer to the complaint," answer, demurrer to the answer, order overruling demurrer to complaint, order sustaining 3rd paragraph to defendant's answer, and judgment in case — Charles Paul *vs.* St Louis, Iron Mountain and Southern Railway Company, tried in the Saline circuit court on appeal from J. P. court, as the same appears of record and on file in my office.

Witness my hand and official seal on this the 17th day of January, 1896.

[SEAL.] W. H. EVANS, *Clerk.*

14 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held on the 27th day, being the fourth Monday, of November, A. D. 1895, at the court-house, in the city of Little Rock, the following proceedings were had, to wit, on the 13th day of January, 1896, a day of said term:

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	2921. Appeal from Saline Circuit Court.

Comes the appellant, by attorneys, and suggests to the court that the record in this cause has been lost or mislaid and ask leave to file a substituted transcript within thirty days, which is by the court granted.

And on February 17th, 1896, the following proceedings were had:

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* JOHN BOLAND, Appellee.	Cross-appeal from Craighead Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* FRITZ WIDDICK, Appellee.	Cross-appeals from Craighead Circuit Court.

Come the appellants in these causes and, on motion and for good cause shown, these causes are passed and set to be called for submission on June 1st with Nos. 2921 and 3123.

15 And on the 30th day of November, 1896, the following proceedings were had, to wit:

SAINT LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	Appeal from Saline Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellants, *vs.* JOHN BOLAND, Appellee.	Cross-appeal from Craighead Circuit Court.

and

KANSAS CITY, FORT SCOTT AND MEMPHIS RAILWAY COMPANY, Appellant, *vs.* FRITZ WIDDICK, Appellee.	Cross-appeal from Craighead Circuit Court.

Come the parties, by attorneys, and these causes are submitted upon the briefs filed with No. 3123 and by the court taken under advisement.

And on the 1st day of May, 1897, the following proceedings were had:

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant, *vs.* CHARLES PAUL, Appellee.	Appeal from Saline Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Saline county and was argued by counsel; on consideration whereof it is the opinion of the court that there
16 is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

17 In the Supreme Court of Arkansas, May 1st, 1897.

No. 87.

ST. L., I. M. & S. R'Y Co.
vs.
PAUL.

K. C., F. S. & M. R'Y Co.
vs.
BOLAND.

K. C., F. S. & M. R'Y Co.
vs.
WHIDDICK.

Opinion.

BATTLE, *J.:*

The appellees, Charles Paul, John Boland, and Fritz Whiddick, were day laborers in the employment respectively of the appellants, The St. Louis, Iron Mountain and Southern Railway Company and The Kansas City, Fort Scott and Memphis Railroad Company, one earning one dollar and twenty-five cents a day and each of the other two, one dollar and thirty-five cents. Their employers discharged them without paying the wages they had respectively earned, and each brought a suit against his debtor for the amount due him and the damages allowed by the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employés of railroads," approved March 25th, 1889. The defendants did not deny that the wages claimed were due them, but resisted the recovery of the damages on the ground that the act under which they were claimed was in violation of the fourteenth amendment of the Constitution of the United States and of the constitution of the State of Arkansas.

The first section of the act in question, to the extent it was sustained in Leep *v.* Railway Company, 58 Ark., 407, is as follows:

"Whenever any corporation, engaged in the business of operating or constructing any railroad or railroad bridge, shall discharge with or without cause, or refuse to further employ, any servant or employee thereof, the unpaid wages of each servant or employee
18 then earned at the contract rate, without abatement or deduction shall be and become due and payable, on the day of such discharge or refusal to longer employ, and if the same be not paid on such day, then, as a penalty for such non-payment, the wages of such servant or employee shall continue at the same rate until paid: Provided, such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time."

In sustaining it the court held that the words "without abatement or deduction," as used in the act, means "that the unpaid wages earned at the contract rate at the time of the discharge shall

be paid without discount on account of the payment thereof before they were payable according to the terms of the contract of employment."

The railroad companies contend that they are persons within the meaning of that word as used in the fourteenth amendment of the Constitution of the United States, and that the act in question, as sustained and construed in Leep *v.* Railway Company, *supra*, is in violation of the amendment, in this: It denies to them the "equal protection of the law." "If it be conceded that they are persons, as contended, it would not follow that they are entitled to all the rights of natural persons. They possess only those rights, powers, or properties which the charters of their creation confer upon them, either expressly or as incidental to their existence. The same is true of all other corporations. All of them are creatures of the legislature. In their creation the legislature could and did divide them into classes and give to each class such rights, capacities, and powers as it saw fit. Neither has the right to complain of a discrimination in favor of one against the other, or that all or any of the rights of natural persons have not been given to it."

The powers conferred upon them by their charters may be modified or diminished by amendment or extinguished by the
19 repeal of the charters. The constitution of this State ordains: "The General Assembly shall have the power to alter, revoke or amend any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators." The railroad companies in this case do not deny, but tacitly concede, that their charters are subject to alteration under this provision of the constitution. The question is, Did the legislature have the power to do so in the manner and to the extent it undertook by the act in question?

In commenting upon such a power to amend, which was reserved by the State of California, Mr. Justice Field, in delivering the opinion of the court in the Railroad Tax cases, 13 Fed. Rep., 754, said: "It (State) may confer by its general laws upon corporations certain capacities of doing business and of having perpetual succession in their members. It may make its grant in these respects revocable at pleasure. It may make the grant subject to modifications and impose conditions upon its use and reserve the right to change these at will; but, whatever property the corporations acquire in the exercise of the capacities conferred, they hold under the same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances. The State grants to railroad corporations formed under its laws a franchise and over it retains control and may withdraw or modify it. By the reservation clause it retains power only over that which it grants. It does not grant the rails on the road; it does not grant the cars on the track, nor the engines which moves them, and over

them it can exercise no power except such as may be exer-
20 cise- with reference to all property used by carriers for the public. The reservation of power over the franchise—that is, over that which is granted—makes its grant a conditional or revocable contract, whose obligation is not impaired by its revocation or change."

"In the Sinking Fund cases, 99 U. S., 700, 'the question was whether Congress had the constitutional power to enact a law compelling the Union Pacific and Central Pacific Railroad Companies to set aside a portion of their current earnings as a sinking fund for the purpose of meeting a very large indebtedness secured by mortgage upon the roads and payable at a future day.' The majority of the court held that the legislation was valid as an exercise of the general legislative powers of the Government, and also because the right to alter or amend the charters of the companies had been expressly reserved to Congress." In commenting on the reserved power to amend or repeal the charters of corporations in that case Chief Justice Waite, in delivering the opinion of the court, said: "All agree that it cannot be used to take away property already acquired under the operations of the charter or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this court, through Mr. Justice Clifford, in Miller *v.* The State (15 Wall., 498), 'it may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors and for the proper disposition of its assets;' and, again, in Holyoke Company *v.* Lyman (*id.*, 519), 'to protect the rights of the public and of the corporators or to promote the due administration of the affairs of the corporation.' Mr. Justice Field, also speaking for the court, was even more explicit when, in Tomlinson *v.* Jessup (*id.*, 459), he said: 'The
21 reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State;' and, again, as late as Railroad Company *v.* Maine (96 U. S., 510), 'by the reservation * * * the State retained the power to alter it (the charter) in all particulars constituting the grant to the new company formed under it of corporate rights, privileges, and immunities.' Mr. Justice Swayne, in Shields *v.* Ohio (95 U. S., 324), says, by way of limitation, 'the alterations must be reasonable; they must be in good faith and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration.' The rules as here laid down are fully sustained by authority. * * * Giving full effect to the principles which have thus been authoritatively stated, we think it safe to say that whatever rules Congress might have prescribed in the original charter for the government of the corporation in the administration of its affairs it retained the power to establish by amendment. In so doing it cannot undo what has already been done, and it can-

not unmake contracts that have already been made; but it may provide for what shall be done in the future, and may direct what preparation shall be made for the due performance of contracts already entered into. It might originally have prohibited the borrowing of money on mortgage or it might have said that no bonded debt should be created without ample provision by sinking fund to meet it at maturity. Not having done so at first, it cannot now by direct legislation vacate mortgages already made under the powers originally granted nor release debts already contracted. A prohibition now against contracting debts will not avoid debts already contracted."

The act of March 25th, 1889, does not interfere with the disposition or control of the property of railroad companies, with their vested rights, or with contracts already made. All it re-
22 quires them to do is to pay the wages earned by their servants or employees, under contracts entered into after its enactment, at the time they discharge them or refuse to give them further employment. The effect of this requirement is to make the wages payable at the time of the discharge or refusal to employ, and to limit the right to contract. But this right was derived from the laws under which the railroad companies were organized, and, according to the cases cited, was subject to be limited, regulated, and controlled by the General Assembly, under the constitution of this State, whenever, in its opinion, it may be beneficial to the public, in such manner as may be just to the corporators. Consequently no right of the railroad companies was violated by the act in limiting the right to contract. Leep *v.* Railroad Company, 58 Ark., 407.

In the Sinking Fund cases the act of Congress required the railroad companies to provide for the payment of certain debts by a sinking fund before their maturity—virtually to pay debts before they were due. The act of March 25th requires the wages of the laborer to be paid when he leaves the employment of the company. One applies to past and the other to future transactions; one to secured debts, the other to the wages of the laborer. The object of each is the enforcement of a duty—the payment of debts. If the former act is constitutional, how can the latter be unconstitutional?

But an act of the legislature is not necessarily unconstitutional in the absence of a reservation of the power to alter or revoke charters, and does not deny the equal protection of the law because it imposes certain duties and liabilities upon only one class of corporations and upon no others. In Missouri Pacific Railway Company *v.* Mackey, 127 U. S., 205, a statute of Kansas provided that "every railroad company organized or doing business in 'that' State shall be liable for all damages done to any employee of such
23 company in consequence of any negligence of its agents, or by any mismanagement of its engineers or other employees, to any person sustaining such damage." Mr. Justice Field, in delivering the opinion of the court, said: "Such legislation does not infringe upon the clause of the fourteenth amendment requiring equal protection of the laws because it is special in its character. If

in conflict at all with that clause it must be on other grounds; and when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws if all persons brought under its influence are treated alike under the same conditions. A law giving to mechanics a lien on buildings constructed or repaired by them for the amount of their work and a law requiring railroad corporations to erect and maintain fences along their roads, separating them from lands of adjoining proprietors, so as to keep cattle off their tracks, are instances of this kind. Such legislation is not obnoxious to the last clause of the fourteenth amendment if all persons subject to it are treated alike under similar circumstances and conditions in respect to both of the privileges conferred and the liabilities imposed. It is conceded that corporations are persons within the meaning of the amendment. * * * But the hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations having for its object the protection of their employees as well as the safety of the public. The business of other corporations is not subject to similar dangers to their employees, and no objections therefore can be made to the legislation on the ground of its making an unjust discrimination. It meets a particular necessity, and all railroad corporations are without distinction made subject to the same liabilities. As said by the court below, it is simply a
24 question of legislative discretion whether the same liabilities shall be applied to carriers by canal and stage coaches and to persons and corporations using steam in manufactories."

In the case last cited the protection of the employés of railroad companies, as in this case, was the object of the act in question. The act in that case, as in this, applies to only one class of corporations and to no others; but the act of March 25th is not dependent on the same power to legislate. The constitution of this State, as before stated, expressly provides that the General Assembly shall have the power to alter, revoke, or annul any charter of incorporation now existing and revocable at the adopton of the constitution or any that may thereafter be created whenever, in their opinion, it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators. In Leep *v.* Railway Company, 58 Ark., 407, we held that the legislature had the power to pass the act of March 25th by virtue of this provision of the constitution. In justifying it, however, we based it, as in the case cited, upon the peculiar character of the business of railroads and the particular benefits to be derived therefrom by the public. We said: "Whenever the charters of railroad companies became obstacles in the way of the legislature so regulating their roads as to make them subserve the public interest to the fullest extent practicable, their charters are in that respect injurious to the citizens of the State, and can be amended as to defects in such manner as will be just to the corporators, for they are organized for a public purpose, and their roads are declared by the constitution to be public highways and they are made common

carriers. They are clothed with a public trust, and in many respects are expressly subjected by the constitution to the control of the legislature. There is no enterprise in which the
25 public is so largely interested as it is in the successful and efficient operation of railroads. With the trust with which they are clothed is imposed the duty to serve the public as common carriers in the most efficient manner practicable. For this reason the legislature may impose on them such duties as may be reasonably calculated to secure such results. Being created by statute, the legislature may so change them by amendment as to make them subserve the purpose for which they were created. If the legislature, in its wisdom, seeing that their employees are and will be persons dependent on their labor for a livelihood, and unable to work on a credit, should find that better servants and service could be secured by the prompt payment of their wages on the termination of their employment, and that the purpose of their creation would thereby be more nearly accomplished, it might require them to pay for the labor of their employees when the same is fully performed, at the end of their employment," and might require them to do so for the purpose of preventing that discontent produced by the non-payment of wages upon discharge which may lead to "strikes" and consequent injury to the interest of the public.

Another evidence of the validity of the act in question may be adduced: The legislature has the power to limit the right of railroad companies to contract by fixing the maximum of charges for the transportation of persons and property over their roads for the protection of passengers and shippers. When the rates of charges allowed are sufficient to yield a reasonable profit, the statute by which they are fixed is within the limits of the power; so in this case the act in question is an exercise of and is within the limits of the same power. It does not seriously impair the right of corporations to contract, but leaves them to contract with their em-
26 ployees on profitable terms, and in view of the public interest thereby subserved is just to the corporators. Leep *v.* Railway Company, 58 Ark., 407.

The validity of the act of March 25th is assailed upon the ground that the exemplary damages allowed for the non-payment of wages are excessive and unreasonable. The same complaint was made of a statute of Iowa, which is as follows: "Any corporation operating a railway that fails to fence the same against live stock running at large at all points where such right to fence exists shall be liable to the owner of any such stock injured or killed by reason of the want of such fence for the value of the property or damage caused unless the same was occasioned by the wilful act of the owner or his agent. * * * And if such corporation neglects to pay the value of or damage done to such stock within thirty days after notice in writing, accompanied by an affidavit of such injury or destruction, has been served on any officer, station or ticket agent employed in the management of the business of the corporation in the county where the injury complained of was committed, such owner shall be entitled to recover double the value of the stock killed or damage

caused thereto." The penalty in that act is imposed on account of the non-payment of damages within the thirty days. The validity of the statute was contested in Minneapolis Railway Co. *v.* Beckwith, 129 U. S., 26. Mr. Justice Field, speaking for the court, said: "As it is the duty of the railway company to keep its track free from animals, its neglect to do so by adopting the most reasonable means for that purpose, the fencing of its roadway, as indicated by the statute of Iowa, justly subjects it, as already stated, to punitive damages where injuries are committed by reason of such neglect. The imposition of punitive or exemplary damages in such cases cannot be opposed as in conflict with the prohibition against the
27 deprivation of property without due process of law. It is only one mode of imposing a penalty for the violation of duty, and its propriety and legality have been recognized, as stated in Day *v.* Woodworths, 13 How., 363, 371, by repeated judicial decisions for more than a century. Its authorization by the law in question to the extent of doubling the value of the property destroyed or of the damage caused upon refusal of the railway company, for thirty days after notice of the injury committed, to pay the actual value of the property or actual damage cannot therefore be justly assailed as infringing upon the fourteenth amendment of the Constitution of the United States."

So in the act of March 25th it is made the duty of railroad corporations to pay the wages of an employee at the end of his employment. To enforce the performance of this duty exemplary or punitive damages are imposed upon them for the failure to do so—that is, the liability to pay the wages at the contract rate until the wages earned on the day of the discharge or refusal to longer employ are paid. They are not necessarily more unreasonable, then, or as much so, as those allowed by the Iowa statute. The railroad company can stop them by the payment or tender of payment of the amount due the employee for wages actually earned. No other amount need be tendered for that purpose; but if it does not adopt this course the damages will not accrue for more than sixty days, "unless an action therefor shall be commenced within that time." The bringing of the action calls its attention to the demands of the employee and continues the wages (damages) beyond the sixty days, unless the company pays or offers to pay the wages earned at an earlier day. If it then fails to pay, the continuance of the penalty is due to its own fault; but it can only continue up to the trial, when the cause of action is merged in the judgment. The law which prohibits the dividing a cause of action and the bringing of a separ-te action
28 upon each part (Reynolds *v.* Jones, 38 S. W. Rep., 151) and merges the cause of action into the judgment is not changed by the act, which is not inconsistent with the rule in such cases.

The damages imposed by the act in question for a violation of the duty enjoined are commensurate with the violation and are within the limits of the discretion of the legislature. Like the penalty imposed by the act which was sustained by the court in State *ex rel.* Barton Co. *v.* Kansas City, Ft. S. & G. R. Co., 32 Fed. Rep., 722, they are large or small, as the delay to pay is of long or short duration.

Our attention has been called to Gulf, C. & S. F. R'y Co. *v.* Ellis, 17 Supreme Court Rep., 255. The statute involved in that case provided that railroad companies failing to pay claims for labor, damages, overcharges on freight, or for stock killed or injured by trains, amounting to less than fifty dollars, within thirty days after presentation thereof, and to reduce the same in a suit thereon, shall be liable for an attorney's fee not exceeding ten dollars. This penalty was not imposed because of the violation of any duty rightfully imposed upon railroad companies, but merely for the failure to defeat the recovery of the full amount of the claim sued on. It was not an amendment or in the nature of an amendment of the charter of railroad corporations, and if it was it does not appear to have been made by virtue of any power reserved to the legislature. The court held that it was unconstitutional, because it arbitrarily imposed a penalty upon a class of corporations which is not imposed upon others guilty of a like delinquency, and because it punishes a railroad company for defending a suit brought against it if it fails to defeat the recovery of the full amount sued for. The act was like that held by this court in St. Louis, Iron Mountain and Southern Railway Co. *v.* Williams, 49 Ark., 492, to
29 be unconstitutional. The act in question in that case provided for the appointment of a board to assess damages, and that if either party refused to abide by the assessment of the board and a suit was brought, the party refusing should be taxed with an attorney's fee in the event the judgment of the court should not be more favorable to him than the award of the board. This court held that the act was unconstitutional, because the legislature had no power to substitute boards of arbitration for the courts without the consent of the parties; that the courts organized under the constitution had exclusive jurisdiction to hear and determine all controversies referred to in the act and could not be deprived of it by the legislature.

But the act of March 25th is not subject to the same objections as the act involved in Gulf, C. — S. F. R'y Co. *v.* Ellis, *supra*. It does not arbitrarily impose a penalty, but it rightfully enjoins a duty and imposes a penalty for the failure to discharge the duty. It was enacted by the legislature in the exercise of the power to regulate railroad companies, for the advancement of the interest of the public, and for the protection of their employees against the unnecessary withholding of their earnings and consequent injuries.

Appellants deny that the legislature has the power to amend their charters except by enacting and publishing at length so much thereof as is amended. This contention is based on a section of the constitution which provides that "no law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be enacted and published at length;" but it is not correct. It is well settled in this and other States where such constitutional limitations are in force that a statute repeals or

operates as an amendment of a prior law upon the same
30 subject to the extent they are in conflict, although the latter is not mentioned in the former. Scales *v.* State, 47 Ark., 481; Churchill *v.* Hill, 59 Ark., 54, 64; Leep *v.* Railway Company, 58 Ark., 407; People *v.* Mahoney, 13 Mich., 481, 496–7; Lehman *v.* McBride, 15 Ohio St., 573; Shields *v.* Bennett, 8 W. Va., 74, 87; Baum *v.* Raphael, 57 Cal., 361; Denver Circle R. Co. *v.* Nestor, 10 Col., 405; Everham *v.* Hulit, 45 N. J. L., 53; Sheridan *v.* Salem, 14 Oregon, 328, 337; Davis *v.* State, 7 Md., 151; Corley on Const. Lim. (6th ed.), 182; 1 Thompson on Corporations, sec. 94, and cases cited.

We therefore conclude that the act of March 25th, so far as it effects corporations, does not violate the fourteenth amendment of the Constitution of the United States nor the constitution of the State of Arkansas, and to that extent is a valid act.

The judgments appealed from are affirmed.

[Endorsed:] Chas. Paul *adv.* St. L., I. M. & So. R'y. Copy of opinion of S. Ct. of Ark.

31 In the Supreme Court of Arkansas.

St. Louis, Iron Mountain & Southern Railway Company, Plaintiff in Error, *vs.* Charles Paul, Defendant in Error.	No. 2921.

Assignment of Errors.

Comes the plaintiff in error, The St. Louis, Iron Mountain & Southern Railway Company, and files herein its assignment of errors.

1st. The court erred in holding that the act of the General Assembly of the State of Arkansas entitled "An act to provide for the protection of servants and employés of railroads," approved March 25th, 1889 (and found on page 76 of the Pamphlet Acts of the State of Arkansas for 1889), was not repugnant to that clause of section 1 of the 14th amendment to the Constitution of the United States which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2nd. That the court erred in holding that said act was not repugnant to that clause of the 14th amendment to the Constitution of the United States which declares that "no State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

3rd. That the court erred in holding that said act was not repugnant to that part of the 5th amendment to the Constitution of the United States which provides that "no person shall be deprived of life, liberty, or property without due process of law."

32 4th. That the court erred in holding that said act was not repugnant to that clause of the 5th amendment to the Constitution of the United States which declares that no property "shall be taken for public use without just compensation."

Wherefore, for the errors above assigned, the plaintiff in error, appellant herein, prays that the judgment rendered in this case be reversed, set aside, and held for naught.

DODGE & JOHNSON,
Attorneys for Appellant and Plaintiff in Error.

Filed May 22d, 1897.

P. D. ENGLISH, *Clerk.*

33 Supreme Court of Arkansas.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Appellant,
vs.
CHARLES PAUL, Appellee.

Bond.

Know all men by these presents that we, the undersigned, are held and firmly bound unto Charles Paul in the penal sum of one thousand dollars, yet upon condition that Geo. E. Dodge and B. S. Johnson—

Whereas the said St. Louis, Iron Mountain & Southern Railway Company has sued out a writ of error for the reversal of a judgment rendered against it in favor of Charles Paul by the supreme court of the State of Arkansas, and a citation has been issued directing the said Charles Paul to appear at the Supreme Court of the United States, to be held at Washington, on the second Monday of October next:

Now, if the said St. Louis, Iron Mountain & Southern Railway Company shall prosecute its said writ of error to effect and answer all damages and costs that may be adjudged against it if it fails to make its plea good, then the above obligation to be void; else to remain in full force.

Witness our hands this 22d day of May, 1897.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
By DODGE & JOHNSON, *Its Attorneys.*
B. S. JOHNSON.
GEO. E. DODGE.

Approved and filed May 22, 1897.

HENRY G. BUNN,
Chief Justice.

[Endorsed:] Filed May 22d, 1897. P. D. English, clerk.

34 STATE OF ARKANSAS:

In the Supreme Court.

I, Peyton D. English, clerk of the supreme court of Arkansas, do hereby certify that the foregoing 34 pages contain a true, perfect, and compared transcript of the record and proceedings in said court in the cause therein stated.

Seal of the Supreme Court of Arkansas.

In testimony whereof I, as such clerk, hereto set my hand and affix the seal of said court, at my office, in the city of Little Rock, Arkansas, this the 25th day of May, A. D. 1897.

P. D. ENGLISH, *Clerk.*

Endorsed on cover: Case No. 16,604. Arkansas supreme court. Term No., 391. The St. Louis, Iron Mountain and Southern Railway Company, plaintiff in error, *vs.* Charles Paul. Filed June 5th, 1897.